



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 05-040

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

General Comment

Many of the comments in this report give one example of a common error in the drafting of the rule; the rule should be reviewed for other instances of the same error. In most cases, a comment that refers to subch. IV of ch. NR 465 applies as well to subch. V.

2. Form, Style and Placement in Administrative Code

a. Both “national emission standards for hazardous air pollutants” and its acronym should be defined.

b. The format of an internal cross reference to a subdivision paragraph, using the example in s. NR 465.31 (2) (e) 2., is “this subd. 2. a. and b.”. [See s. 1.07 (2), Manual.]

c. Examples or other explanatory material could be removed from the text of the rule and placed in notes. See, for example, s. NR 465.32 (2), in which “such as thermal oxidizer or carbon adsorber” could be placed in a note.

d. Section NR 465.32 (34) should read, “Responsible official” has the meaning given in s. NR 400.02 (136).

e. Section NR 465.32 (35) defines the term “startup, initial.” The term used in the rule is “initial startup,” and that is the term that should be defined. (But, does this term need defining?)

f. Since the other paragraphs in s. NR 465.38 (1) and (2) have titles, pars. (1) (c) and (2) (a) should also be given titles.

g. Since s. NR 465.43 (1) (a) (intro.) refers to “a new or reconstructed affected source,” each of the following subdivisions should also refer to both new and reconstructed sources.

h. The phrase “as defined in s. ...” should not be used if the definition already applies to the provision containing that phrase, as is the case with the definition of “coating” as used in s. NR 465.43 (2) (intro.).

4. Adequacy of References to Related Statutes, Rules and Forms

a. The rule makes frequent references to emission limits without clearly identifying what limits are intended. See for example, s. NR 465.31 (2) (e) 3.

b. Similarly, the rule makes frequent reference to various compliance options (e.g., the “facility-specific emission limit alternative,” the “compliant material option,” the “emission rate without add-on controls option,” and the “emission rate with add-on controls option”). In most cases, there is no reference to the rule provisions that establish these options, and so no clarity as to what the options are.

c. In a number of instances, the rule refers to “this section” where it appears to intend “this subsection.” See, for example, s. NR 465.35 (3) (intro.). It might be clearer to use the convention used in much of the rule, referring to (in this example) pars. (a) to (i).

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Should s. NR 465.31 (2) (e) 2. b. refer to kg. of solids *per some unit of coating*?

b. There are several references to “the administrator,” presumably the EPA Administrator. Should these refer, instead, to the secretary of the department of natural resources?

c. In s. NR 465.35 (1) (b), could “April 19, 2005” be substituted for “one year after April 19, 2004”? Also, since this date has already passed, is the provision necessary?

d. Section NR 465.36 (2) (intro.) makes no mention of the paragraphs that follow, and so does not serve as an introduction. Should the three occurrences of “this section” be replaced with “pars. (a) to (d)”?

e. The rule uses numerous equations, identified individually by number. However, the numbering starts over at equation 1 for each section or subsection. To avoid the possibility of confusion, it may be desirable to number equations sequentially throughout an entire subchapter.